IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4491 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

K B VARU
Versus
D D O AND OTHERS

==========

Appearance :
MR RN SHAH for Petitioner

Ms Trusha Patel, AGP for respondent No.1

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 04/12/2006

ORAL JUDGMENT

By filing this petition the petitioner has prayed that order dated 17th May 1990 passed by respondent No.2 may be quashed and set aside and the consequential order dated 18th May 1990 passed by respondent No.3 may also be set aside. The petitioner was appointed on ad-hoc and temporary basis as a Dayan (Midwife). The petitioner was required to attend the patient at the time of delivery. It seems that the petitioner has undergone the training for which a certificate dated 26.10.1986 was issued by the Medical Officer, Primary Health Centre, Dudhai. Thereafter, by order dated 3rd January 1990 the petitioner was appointed on ad-hoc and temporary post as Dayan (Midwife) in the pay scale of Rs.750-870-940. It is mentioned that the said appointment is subject to rules and regulations framed under the Gujarat Panchayats Act, 1961. Subsequently, by an order dated 17th May 1990 her services were terminated on the ground that her appointment is not approved by the District Development Officer. Accordingly, her services were terminated with effect from 18.5.1990. The said order is challenged by way of this petition.

Learned advocate Mr Mehta that for the post in question no recruitment rules are framed. It is submitted that the petitioner was regularly appointed on ad-hoc basis and, therefore, order of termination is illegal and arbitrary. Ms Trusha Patel, learned Assistant Government Pleader, on the other hand, submitted that the petitioner was not appointed by way of regular procedure and, therefore, she is not entitled to be appointed on the said post. Affidavit-in-reply is also filed by the District Development Officer, which is at page 19. As per the same, it is pointed out that the Taluka Development Officer is the appointing authority but he has not appointed the petitioner, he has not invited any names from the employment exchange and he could not have appointed anyone at his own sweet will and by following pick and choose policy. It

is pointed out that the appointment is made contrary to the recruitment rules.

Learned advocate Ms Patel submitted that since the petitioner's appointment was not as per the rules, termination order is justified.

In my view, the petition is required to be disposed of with a direction to the Department that as and when the Department invites an application for filling up the post of Dayan and if the petitioner applies pursuant to the said advertisement, the case of the petitioner may be considered for such appointment as per the rules and regulations. Since the petitioner was already granted appointment in the past by the Taluka Development Officer and since the petition was pending before this Court since long, if the petitioner requests for age relaxation, her request may be considered appropriately.

Subject to the aforesaid observations and directions the petition stands disposed of. Rule is discharged. No order as to costs.

(P.B.MAJMUDAR, J.)

*mohd